

"STATE OF THE COURT" ADDRESS - OCTOBER 9, 1998

On behalf of all of the bankruptcy, district, and magistrate judges I want to thank the joint federal court committee of the Maryland State Bar Association and Federal Bar Association for having organized today's bench/bar conference. I would also like to thank all of you who participated in the planning effort, the members of the panel who discussed recent court decisions, and the facilitators of the break-out groups. Special thanks are due to James Nolan, whose idea the conference was and who worked tirelessly in its planning. Please join me in a round of applause for Mr. Nolan.

I have been asked to give a "state of the court address." That is a rather lofty title, and I have no illusions that any remarks I might make could live up to it. However, it is timely for me to share with you some thoughts about the court. We are presently engaged, for the first time in our history as far as I know, in a strategic planning process, and as we look toward the future, it is worthwhile to know where we stand today.

First, some statistics.

There are presently 28 judges associated with the court: 10 active district judges, 5 senior district judges, 4 bankruptcy judges, 7 full-time magistrate judges, and 2 part-time magistrate judges, one of whom sits on the eastern shore, the other in western Maryland. Tom DiGirolomo, who sits in Hagerstown, was informally sworn in only at the end of September and will be formally invested in a ceremony in the Washington County Courthouse on November 6th.

The district court's caseload has grown by 25% in the last five years, and we anticipate that the Judicial Conference of the United States will soon be recommending to Congress the creation of a new district judgeship. The relevant statistics suggest that if an additional judgeship is approved, the new judge should sit in Greenbelt. The bankruptcy court's caseload has grown by 135% in the last five years, and Congress, we very much hope, is finally near authorizing two new bankruptcy judgeships in the district, one for Greenbelt and one for Baltimore.

The scope of the court's administrative operations has substantially broadened in recent years. Taking into account our four constituent agencies (the bankruptcy court and its clerk's office, the district court clerk's office, the pretrial services office, and the probation department), our chambers' staffs, our staff attorneys, and our CJA coordinator, we have almost 500 employees. Our budget is approximately twenty-two and a half million dollars.

There are over 29,200 cases pending in the bankruptcy court. In the district court there are 3100 pending civil cases and over 500 pending criminal cases. Prisoner cases of various sorts constitute 13% of the court's docket. Excluding those cases, the major categories comprising the district court's caseload are employment discrimination (15%), motor torts and FELA actions (7%), other torts (16%), contract and commercial cases (14%), and miscellaneous civil rights cases (10%). The district court's criminal docket, unfortunately - at least from the perspective of professional satisfaction - is dominated by drugs and guns, guns and drugs. Last year we had a series of extremely long criminal trials, including the first capital case in modern times. The defendant was convicted but the jury declined to impose the death penalty.

As most, if not all, of you know, we use an individual assignment system. The system has many advantages, including (1) assuring continuity throughout the progress of the case for judges, parties, and counsel, (2) providing an incentive to judges to carefully consider and resolve summary judgment and other pretrial motions, and (3) giving judges the independence to manage their own workload.

We recognize, however, that there are at least three disadvantages to the individual assignment system. First, since experience demonstrates that most cases are resolved without

trial, most of us usually schedule more than one trial for the same week. Therefore, a strict individual assignment system sometimes requires postponements of trials when, unexpectedly, civil cases do not settle or criminal defendants do not plead guilty. A single judge, however conscientious, cannot regularly try two cases at the same time. Second, a particular judge, no matter how efficient he may be, may temporarily fall behind in his work because of a series of long trials. Third, not all judges are as efficient as others, and therefore some do not decide their motions or conduct their trials as promptly as their colleagues.

Because of these deficiencies in the individual assignment system, during the past four years or so we have supplemented the system in several respects. First, we routinely volunteer to take trials from one another when one of us has a conflict in her trial schedule. As an aside, I note that more often than not, the holding in of the trial dates has resulted in at least one of the cases being settled. Second, my colleagues have generously permitted me to go on a half-draw from time to time so that I can assist a judge who has fallen behind in deciding dispositive motions. Third, Judge Smalkin, whose reputation for efficiency is wide-spread and well deserved, has occasionally provided similar assistance to a judge who, by the bad luck of the draw, has been assigned a series of long criminal trials. Fourth, Judge Harvey, who is particularly adept in managing complex litigation, has taken over responsibility for several large cases when circumstances have required.

Because of a statistical imbalance in caseload, the active judges in the northern division take one quarter of the civil cases filed in the southern division. Several of the judges in Baltimore attempt to go to Greenbelt to try those cases but our schedules usually preclude us from doing so. Not infrequently, this fact helps persuades counsel to consent to a trial, jury or nonjury, before a magistrate judge in the southern division. The far more potent factor that results in magistrate judges, both in the northern and southern division, trying cases by consent is their extraordinary ability. I have no doubt that our corps of magistrate judges is among the strongest, if not the strongest, in the country. I might also note that three of the district judges have come from their ranks: Judges Smalkin, Chasanow, and Blake.

Other courts have their magistrate judges take a regular draw of civil cases. Why, you might ask, do not we? There are two reasons. First, we have a fundamental misgiving about requiring counsel and parties to "opt out" if they want to have their cases heard by a district judge (as the system of placing magistrate judges on the regular draw requires them to do). Second, magistrate judges provide tremendous service to the public by performing the myriad of responsibilities the court now entrusts to them, and they simply would not have time to meet those responsibilities if they were placed on the regular draw.

Perhaps the most valuable - and oft-times challenging - service our magistrate judges perform is to preside over settlement and other forms of mediation conferences. Without their efforts our docket would be badly jammed. They have been presiding over settlement conferences for years - long before the national craze for alternative dispute resolution that has spread through the legal community - and their experience, hard work, patience, and persuasiveness more often than not leads to the achievement of constructive compromise, sometimes in cases where before their intervention the possibility of settlement seemed remote. We do not, however, have a system of mandatory court-annexed mediation; both our original committee empaneled under the Civil Justice Reform Act of 1990 and the follow-up committee appointed under the Act, recommended that we not institute one. In their view, a view shared by my colleagues and myself, mandatory mediation in cases where settlement simply is not possible increases, not decreases, the cost and delay of litigation. It would also divert the time of our magistrate judges from the other duties to which they must attend.

Let me now turn my attention to the court's physical facilities. Our places of holding court include not only our two primary courthouses in Greenbelt and Baltimore, but also a Maryland district court facility in Hyattsville, the old post office building in Salisbury, and federal facilities at Aberdeen Proving Grounds, Andrews Air Force Base, Annapolis, Fort Detrick, Fort Meade, and

Patuxent Naval Base. Our agreement with the State to use the Hyattsville courthouse expires in two years, and if the Maryland district court needs the space we now use, we will have to make alternative arrangements with regard to the proceedings now held there. Otherwise, with the exception of the Salisbury post office, the satellite facilities used by our magistrate judges are entirely adequate.

The situation in Salisbury is, however, entirely unacceptable. The courtroom there is on the second floor. There is no elevator, and the courtroom is therefore not accessible to those who are disabled. One of the court's immediate priorities is to rectify this problem.

I assume that most of you, and hope that all of you, have had the opportunity to visit the courthouse in Greenbelt. It is a wonderful place. It has now been operational for four years, and has brought a sense of community to the area around it. In this respect it is much like the magnificent new federal courthouse in Boston is intended to be, at much lesser cost. The program of presenting exhibits by local artists that Judge Messitte has initiated brings members of the public into the courthouse for a happier purpose than is usual. Even those who are there as litigants are sometimes surprised by it. Two weeks ago Judge Williams had the misfortune to have before him as criminal defendants several nuns and priests who had poured blood on B-52

bombers at Andrews Air Force Base. The defendants had been in many courthouses before but, as they passed an exhibit of sixties art in the public corridor, they remarked that they had never been in one where acts of civil disobedience were pictured. I might add as an aside that the trial ended in a way that will become part of our history, evoking memories of the trials of the Berrigans and others more than a quarter century ago. After they had been convicted of several misdemeanors, the defendants informed Judge Williams that they would no longer cooperate with legal authorities and would not appear at sentencing. Faced with their recalcitrance, the judge had no choice but to grant the government's motion to revoke their bond. The defendants and their supporters immediately began to sing, and for several minutes the sound of hymns resonated throughout the courthouse.

Plans are underway for the construction of a new chambers and courtroom for Magistrate Judge Day and a chambers and courtroom for the new bankruptcy judgeship that we anticipate will soon be created for the southern division. When those projects are completed, there will be room for only one more chambers and courtroom in the Greenbelt courthouse. Therefore, as we look out ten to fifteen years from now it is clear that an addition to the Greenbelt courthouse must be constructed. By then our present district judges in the southern division will be eligible for senior status, there may be a judge on the Fourth Circuit from the southern division, and at

least two or three new judgeships (district, magistrate, or bankruptcy) are likely to have been created there.

Our anticipated space needs in Baltimore are not as acute. Not counting the four courtrooms on the second floor formerly used by magistrate judges that are so small as to be virtually unusable, there soon will be (upon construction of a new courtroom for Bankruptcy Judge Schneider) 16 courtrooms usable by trial judges in the courthouse. In addition, there are two beautiful courtrooms designated for use by the Fourth Circuit. There are 25 existing chambers in the courthouse. As we look out ten to twelve years, even if we assume four new judgeships in Baltimore, we do not anticipate there being more than 25 judges sitting there.

This is not to say, however, that replacement of, or major renovation to, the Baltimore courthouse is not required. The courthouse was "built on the cheap" in the 1970s. On the exterior it looks like a second-rate office building, and inside most of its courtrooms are undersized and unsightly. More importantly, it poses a significant security risk.

Because of these concerns we have very recently been advised by the Administrative Office of the U.S. Courts that it will probably be recommending the construction of a new courthouse in Baltimore to be completed within ten to twelve years. We hope that project will go

forward. If it does not, we have an alternative plan that calls for reorienting the courthouse from Lombard Street, where its entrance is presently located, toward Pratt Street, to which it now turns its back. Lombard Street is tunneled by lifeless buildings and is a vehicular corridor, while Pratt Street has become a pedestrian promenade, connecting Camden Yards to the Inner Harbor, the convention center to the aquarium. The courthouse should be welcoming to those who visit the city.

In any event, there are several smaller steps we plan to take over the next year or so to make the Baltimore courthouse more user-friendly and to enhance its beauty. We hope in the near future to establish a courthouse museum on the second floor, celebrating lawyers, legislators, and judges who have played significant roles in the life of the court, and presenting exhibits that depict the historical context in which memorable trials in the district were held. Plans are presently being implemented to turn two offices on the third floor into attorney conference rooms. Thanks are due to Herb Better and Chuck Morton, the bar's representatives, and Mary Widomski of the Baltimore City Circuit Court who has been serving as our consultant, for the dedicated work they have performed on this project. One of the conference rooms will be somewhat formal, the other a work area with computer hook-ups, a fax machine, a copier, and the like. We hope to have this project completed by the beginning of 1999.

We then plan to turn two more offices on the first floor into informal meeting rooms for lawyers to meet with clients or witnesses over a cup of coffee or a hurried lunch. In that regard the court will be asking the assistance of the bar in seeking to have adequate food services provided in the courthouse. The existing cafeteria has not kept up with demand, and complaints are made about the quality of food it serves. A building in which so many people work and which is regularly visited by lawyers, litigants, witnesses, and jurors, many of whom are on extremely tight schedules, should have a decent place to eat.

Important though the construction of an addition to the Greenbelt courthouse and the replacement or renovation of the Baltimore courthouse are, they pale in significance to another project that, if we listen to our consciences, is our highest priority: the construction of a federal pretrial detention facility or, at least, the taking of steps to prohibit the Department of Justice from renewing its contract to lodge federal prisoners in the Baltimore City Detention Center and to find a suitable alternative state facility instead. Let me speak plainly: the BCDC is a living hell. The physical conditions are deplorable, the medical care often has been grossly inadequate, drug usage is rampant, and physical assaults, stabbings, and suicides are not infrequent. The problems have been well known and well documented for over a decade but nothing effective has been done about it.

I lament the lack of support we have received from our elected officials in our efforts to have a federal pretrial detention facility constructed. However, it is easy to criticize when one has life tenure. Our legislators and other political leaders are simply listening to their constituents, and no one wants a prison or detention facility built in their own neighborhood. What is needed is a constituency that insists that this situation can no longer be tolerated. This is where all of you, as members of the bar, have a critical role to play. Providing a humane facility for housing federal pretrial detainees is not simply a matter to be addressed by those who practice in the field of criminal law. It is properly a matter of concern to every lawyer and every citizen who believes in the rule of law and in the duty of a civilized society to treat its most downtrodden with fundamental decency. I urge each and every one of you to become involved in an organized effort to let the members of our congressional delegation know that one of the costs of effective federal law enforcement is the establishment of adequate federal pretrial detention facilities, and that capital, both economic and political, must be expended in the effort.

Before I close I would like to note six areas of concrete achievement in which the court can take appropriate pride.

First, the creation of the southern division was something most lawyers and judges in the

Baltimore area resisted and feared. I will not pretend that during the past four years since the Greenbelt courthouse was opened, potential fault lines have not occasionally appeared. All of you who have offices in more than one location know the tensions inherent and inevitable in such a situation. The key is to identify those tensions, discuss them honestly and straightforwardly, sort out legitimate from illegitimate concerns, and constructively forge solutions to them. I commend my colleagues, both in the south and the north, for having done precisely that. We work well together, we share our caseload in order to be fair both to one another and to the counsel and litigants who appear before us, and we learn from one another, personally and professionally. We have been able to preserve the tradition of genuine collegiality we have inherited from our forebears. There may come a point in the distant, unforeseen future that the two divisions will have become so large that they no longer benefit from their joinder. The creation of separate districts would then be the proper course to follow. In the meantime, the strength and prestige of the court are enhanced by our continued successful integration.

Second, we have similarly been successful in coordinating activities of our four constituent agencies in many areas, including courtwide budgeting, automation, and the establishment of common personnel policies. The persons primarily responsible for the success of these efforts are the excellent chief executive officers of the four units, Frank Monge (the clerk of the court),

Richard Donovan (the clerk of the bankruptcy court), William Henry (the chief of pretrial services), and David Johnson (the chief of the probation department). Particular thanks are due to Mr. Monge who has taken on the unenviable task of modernizing the operations of the district court's clerk's office and making it more efficient and responsive to the needs of the public and the lawyers whom it serves. He has the support of the entire bench in his efforts.

Third, less than three years ago we were an organization that used automation for little more than making statistical reports to the Administrative Office and performing basic word processing. Now, we are fully networked, both internally and externally; with the assistance of the bar we have developed first-rate websites (on which, incidentally, we are beginning to place some of our opinions); we have placed our standard forms on templates so that they can easily be retrieved by all users and regularly reviewed and updated,; and we are implementing an imaging system that will pave our way to electronic filing. In short, within two years we have gone from the back of the pack to becoming a leader among our peers on automation issues. Of course, we could not have accomplished any of this without the members of our automation staffs.

Fourth, we have instituted a practice (followed, I believe, by all but one of us) of using a uniform scheduling order and other common forms. We have done so primarily to benefit the members of our bar; no longer do you have to be concerned that buried somewhere deep inside a

routine order is a provision that could trap you if not complied with. We have also set forth in our Local Rules and in a list that many of us provide to counsel prior to trial rules concerning how you should conduct yourself during a trial. We have established guidelines for the award of attorneys' fees in employment discrimination and civil rights cases which are intended to assist both the bench and the bar. They appear as an appendix to our Local Rules. With the assistance of the MSBA/FBA federal court committee we have adopted discovery guidelines that are another appendix to the Local Rules. Our Rules Committee is now considering form interrogatories and requests for production recommended by the MSBA/FBA federal court committee. Let me also mention that we are in the early stages of our biennial process of considering amendments to our Local Rules, and would appreciate your submitting to us any suggested amendments on or before December 15th.

Fifth, we have also demonstrated national leadership on Criminal Justice Act issues. We have decreased the size and increased the quality of our CJA felony panel by reducing it to approximately one hundred lawyers (from around four hundred lawyers) and requiring their attendance at an annual training seminar. I want to take this opportunity to say how deeply we are indebted to the members of the panel for the services they render on behalf of indigent defendants. We have instituted case budgeting in capital habeas cases and direct death cases. We

must assure Congress and the public at large that we are managing our CJA budget responsibly while at the same time protecting against irresponsible ideological attacks upon the CJA program that would devastate the criminal justice system. Finally, we have hired a CJA supervising attorney who assists us in managing our panel, reviewing vouchers, budgeting death cases, and serving as a resource to CJA lawyers on a myriad of administrative and fiscal matters. We were fortunate to be able to hire Donna Shearer, who had been a lawyer with the death penalty unit of the state public defender's office, as our CJA supervising attorney. Ms. Shearer's work is often thankless but she has exceeded our expectations in every way.

Sixth, as I mentioned at the beginning of these remarks, we are presently engaged in a strategic planning process. This process has required us to articulate and critique our assumptions, helped us to maintain a consensus about our operating goals and practices, forced us to consider the long-term implications of our short-term decisions, identified future trends that may affect us, and led us to set benchmarks by which we can measure our performance. In order to be of permanent value, the process must be a continuing one, but we have taken an important first step in getting it started.

A resonating theme throughout our strategic deliberations has been that the court must be

accountable and responsive to the public. Of course, the final test of the quality of our performance is the quality of our substantive judicial work - a matter beyond the reach of court administration. However, there are many things we can do administratively to enhance "customer satisfaction," ranging from asking everyone who works with us to be courteous to all (except the unruly) who enter our courthouses, to implementing effective case management systems, to providing incentives to court employees for superior performance, to training new judges on conducting trials in a way that minimizes juror inconvenience. Our focus must always be outward to the litigants, lawyers, witnesses, jurors, and other constituencies to whom we are responsible. At the end of the day all of our strategic planning, policies and management systems will be for naught if they fail to instill throughout the court a spirit of public service and to foster an inquiring attitude of mind that constantly asks the question "how can we do what we are doing better?"

On a very practical level you can assist us in our efforts. Please point out to us how we can improve our operations. Please also let us know when our employees have done something well. We will pass it on so that they know that good service is appreciated.

Thank you again for having come today. Let us now enjoy the fine food and drink Donna

Sanger and her committee have arranged for us.